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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,115	11/25/2003	Steven D. Girouard	279.597US1	4851
21186	7590	07/13/2007		
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
			EXAMINER BEISNER, WILLIAM H	
			ART UNIT 1744	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/722,115

Applicant(s)

GIROUARD ET AL.

Examiner

William H. Beisner

Art Unit

1744

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-10, 12-14 and 73-79.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

/William H. Beisner/  
Primary Examiner  
Art Unit: 1744

Continuation of 13. Other: Amended claim 1 and new claims 76-79 as well as claims 2-10, 12-14 and 7-75 are rejected over the combination of the references of Dennis et al.(US 6,114,164) in view of Kofidis et al.(Journal of Thoracic and Cardio. Surg.), Farb et al.(US 6,048,722), Bursac et al.(Am. J. Physiol. 277) and Terracio et al.(In Vitro Cell. and Develop. Bio.) for the same reasons as set forth in section (5) of the Final Office Action dated 4/4/2007. Claim 1 is rejected for the same reasons set forth with respect to canceled claim 72 and claims 76-79 are rejectable because the controller resulting from the combination of the references discussed in the rejection are structurally capable of providing the control and/or processing required of claims 76-79. With respect to amended claim 1, Applicants argue that the rejection is improper because "Applicant is unable to find in the cited portions of Dennis, Kofidis, Farb, Bursac, and Terracio, individually or in combination, among other things, a memory circuit including an instruction set adapted to condition cells for administration into tissue of myocardium, the instruction set defining a predetermined sequence of one or more electrical, mechanical, and biological stimuli, and a controller adapted to control the cardiac electrical stimulator, the myocardial stress simulator, and the biological treatment administration module by automatically executing the instruction set". Applicants stress that none of the recited references disclose this specific claim language. 1. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the reference of Dennis et al. discloses a controller and user interface (52) that includes input devices, memory and display which allow manipulation of the conditions within the system. The additional references as discussed in the rejection of record provide the motivation for controlling the different stimulation devices for emulating the conditions found in vivo. As a result, an apparatus programmed as suggested in the rejection of record would meet the memory circuit limitations of amended claims 1 (canceled claim 72). With respect to Applicants' comments concerning the reference of Kofidis, the reference discusses electrical stimulation, mechanical stimulation and chemical stimulation (See page 64 column 2, last paragraph, to page 65, column 1, first paragraph, and "Results" section page 63). Clearly one of ordinary skill in the art reviewing this reference would be capable of additionally biologically stimulating the tissue when electrically and/or mechanically stimulating the cardiac tissue. For these reasons, the claims remain rejected.